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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/830,763	07/25/2001	Mohamed Bakri Assoumani	U0134207	2199

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EXAMINER
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PRATT, HELEN F

ART UNIT	PAPER NUMBER
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1761

12

DATE MAILED: 12/31/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/830,763	ASSOUMANI, MOHAMED BAKRI	
	<b>Examiner</b>	<b>Art Unit</b>	
	Helen F. Pratt	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 12 February 2000.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 10-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 10-12 and 14-20 is/are rejected.
- 7) Claim(s) 13 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                    | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Specification***

A substitute specification is required pursuant to 37 CFR 1.125(a) because the specification and claims are not clear due to a poor copy of the application.

A substitute specification filed under 37 CFR 1.125(a) must only contain subject matter from the original specification and any previously entered amendment under 37 CFR 1.121. If the substitute specification contains additional subject matter not of record, the substitute specification must be filed under 37 CFR 1.125(b) and must be accompanied by: 1) a statement that the substitute specification contains no new matter; and 2) a marked-up copy showing the amendments to be made via the substitute specification relative to the specification at the time the substitute specification is filed.

### ***Claim Objections***

Claim 11 is objected to in the spelling of "oreganoleptic" which should be – organoleptic - .

The use of the trademark AQUAMIN has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 14-17 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 11 requires that the foodstuff contain an emulsified fat phase into which the corallinaceae residue is incorporated. No basis is seen in the specification for adding the corallinaceae in the oil phase to a carbohydrate product or a chocolate product as in claims 14 and 15 or to a farinaceous product as in claim 16 or a starch product as in claim 17.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the

remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 10 recites the broad recitation "primarily mineral substances", and the claim also recites particularly carbonates" which is the narrower statement of the range/limitation.

Claim 10 is indefinite in the use of phrase "organoleptic" and physical properties". It is not known which organoleptic or physical properties are to be improved.

Claim 12 is indefinite in that it is not clear whether the corallinaceae residue is in the fat material, which is distributed evenly throughout the foodstuff, or whether the foodstuff contains fat material and the corallinaceae is distributed throughout the foodstuff. If the corallinaceae is to be distributed throughout the foodstuff it should depend from claim 10, which does not have the emulsified fat containing corallinaceae in it.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 10 is rejected under 35 U.S.C. 102(a) as being anticipated by Auchincloss (WO98/33508).

Auchincloss discloses a composition from corallinaceae with reduced mineral content, which has been purified by bleaching and washing (page 3, lines 10-35). The composition can be added to foods with an emulsifier and added to the oil phase of a foodstuff (page 7, lines 22-29 and page 9, lines 19-25, page 11, lines 23-40). The amount of heavy metals in the composition is seen to be acceptable for food products because the method found in the specification (pages 7 and 8) is the same as that found in the reference (page 3, lines 1-35 and page 4, lines 1-30). A food containing fatty acids is considered to be solid or semi solid as are bakery products and bread (page 7, lines 6-14, page 11, lines 24-34). The calcium is considered to be in the same form as that from coral, hence the use of the name corallinaceae because coral also contains calcium in the mainly calcium carbonate form (Webster's dictionary, page 289).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 11-12, 14-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Auchincloss (WO 98/33508).

Auchincloss discloses that the corallinaceae in pure form is combined with oil and water to make an emulsion. The emulsified product is considered to be an edible foodstuff, because oil emulsions can be margarines which are edible. Claim 11 differs from the reference in having improved organoleptic and physical properties. However, it

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is not clear which organoleptic properties are intended to be improved. The product would be improved as much as claimed since the composition is the same. Therefore, it would have been obvious to add corallinaceae to a product to improve its properties as shown by the reference.

Claim 12 requires that the product contains fat material and that the corallinaceae residue is distributed generally in the foodstuff. However, this is a process limitation in a composition claim, which is not given weight. The composition has been shown and is obvious for those reasons.

It is not clear as in claims 14-17 whether the corallinaceae is intended to be in the fat phrase. If it is not then Auchincloss disclose as in claim 14 that the calcium product can be used in bakery products, bread toppings, i. e. all sources of carbohydrates and in chocolates as in claim 15 (page 11, lines 23-38). Farinaceous products contain grains, which are known to be a source of flour as in claim 16. Flour is known to be used in bakery products. Starch is also found in flour which is found in the above disclosed bakery products. Therefore, it would have been obvious to use a material containing calcium and other minerals, which has been emulsified in the fat phase in a carbohydrate or chocolate type foodstuff.

The particular amount of material is seen to have been within the skill of the ordinary worker depending on the degree of fortification required as in claim 18. Therefore, it would have been obvious to use particular amounts of the material in a product.

Claim 19 is to mixing the composition with a foodstuff and claim 20 ingesting the product. However, the reference discloses compositions which are known foodstuffs. Therefore, it would have been obvious to ingest a food intended for consumption.

***Allowable Subject Matter***

Claim 13 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims and if the examiners' assumption is correct that the corallinaceae residue is in the fat phase of the ice cream. Claims 14-17 would also be allowable if this assumption is true and basis is put into the specification as these are original claim limitations and if no new matter is added. See 112's above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 703-308-1978. The examiner can normally be reached on Monday, Wednesday and Friday from 9:30 to 6:00 and Tues and Thurs. from 4:30 to 10 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on (703) 3959. The fax phone number for the organization where this application or proceeding is assigned is 703-308-7718.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1193.

Hp 12-17-02

  
HELEN PRATT  
PRIMARY EXAMINER